

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

Case No: 5:23-cv-00489-D-BM

CHRISTOPHER CAUDILL; RACHEL
NIKETOPOULOS; and DAVID
FRIEDLANDER, A/K/A DOVID
FRIEDLANDER,

Plaintiffs,

v.

THE NORTH CAROLINA SYMPHONY
SOCIETY, INC.; THE NORTH
CAROLINA DEPARTMENT OF
NATURAL AND CULTURAL
RESOURCES; and SANDI
MACDONALD,

Defendants.

**THE NORTH CAROLINA
SYMPHONY SOCIETY, INC. AND
SANDI MACDONALD’S MOTION
TO DISMISS**

(Fed. R. Civ. P. 12(b)(6))

Defendants The North Carolina Symphony Society, Inc. (the “Symphony”) and Sandi Macdonald move under Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss all claims in the Complaint filed by Plaintiffs Christopher Caudill, Rachel Niketopoulos, and David Friedlander, a/k/a Dovid Friedlander.

Plaintiffs claim that the Symphony is liable for discrimination based on religion under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (“Title VII”), and that the Symphony and Macdonald are liable for violating the Free Exercise Clause of the First Amendment to the United States Constitution under 42 U.S.C. § 1983 (“Section 1983”) for denying their requests for an exemption from a COVID-19 vaccination policy and terminating their employment based on their failure to comply with that policy. As explained in the Symphony and Macdonald’s accompanying memorandum of law, Plaintiffs’ Title VII claim is time-barred because they did not file charges of

discrimination with the Equal Employment Opportunity Commission within 180 days after the denial of their requested accommodations. Similarly, their Section 1983 claim fails because they do not plausibly allege that the Symphony or Macdonald acted under color of state law in making the challenged decisions, and thus have not adequately alleged that the challenged employment actions are fairly attributable to the State of North Carolina.

Therefore, for the reasons articulated above and in the Symphony and Macdonald's accompanying memorandum of law, which is hereby incorporated by reference, none of Plaintiffs' claims state a claim upon which relief can be granted, and the Complaint should be dismissed.

This the 3rd day of November, 2023.

SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF System, which will send notification of such filing to all counsel and parties of record.

This the 3rd day of November, 2023.

SMITH, ANDERSON, BLOUNT, DORSETT,
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